

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 17.8.501, 17.8.504,)	PROPOSED AMENDMENT
17.8.505, 17.8.511, 17.8.514)	
and 17.8.515 pertaining to)	
definitions, permit)	(AIR QUALITY)
application fees, operation)	
fees, application/operation)	
fee assessment appeal)	
procedures and open burning)	
fees)	

TO: All Concerned Persons

1. On July 30, 2003, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 21, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.501 DEFINITIONS For the purposes of this subchapter:

(1) ~~"Source(s) of air contaminants" shall mean all air contaminant emission points, including fugitive emissions, located on 1 or more contiguous or adjacent properties and under common control or ownership.~~ "Facility" means any real or personal property that is either stationary or portable and is located on one or more contiguous or adjacent properties under the control of the same owner or operator and that emits or has the potential to emit any air pollutant subject to regulation under the Clean Air Act of Montana or the Federal Clean Air Act, including associated control equipment that affects or would affect the nature, character, composition, amount, or environmental impacts of air pollution and that has the same two-digit standard industrial classification code. A facility may consist of one or more emitting units.

AUTH: 75-2-111, MCA
IMP: 75-2-211, MCA

17.8.504 AIR QUALITY PERMIT APPLICATION FEES

(1) Concurrent with submittal of ~~an~~ a Montana air quality

permit application, as required in ARM Title 17, chapter 8, subchapter 7 (~~Permit, Construction and Operation of Air Contaminant Sources~~), or ARM Title 17, chapter 8, subchapter 8 (~~Prevention of Significant Deterioration of Air Quality~~), the applicant shall submit an ~~air quality permit~~ application fee of \$500.

(2) Concurrent with submittal of the following air quality operating permit applications, as required in ARM Title 17, chapter 8, subchapter 12, the applicant shall submit an application fee of \$500:

(a) an application for a new air quality operating permit that is not submitted concurrently with a Montana air quality permit application;

(b) an application for an air quality operating permit renewal; or

(c) an application for a significant modification to an air quality operating permit.

~~(2)~~ (3) A An air quality permit application is incomplete until the proper application fee is paid to the department.

(3) remains the same, but is renumbered (4).

AUTH: 75-2-111, 75-2-220, MCA

IMP: 75-2-211, 75-2-220, MCA

17.8.505 AIR QUALITY OPERATION FEES (1) ~~As a condition of continued operation, an~~ An annual air quality operation fee must be submitted to the department by the owner or operator of:

(a) each ~~source of air contaminants holding an facility for which a Montana air quality permit, excluding an open burning permit, issued by the department has been issued by the department and remains in effect;~~ and

(b) each ~~source of air contaminants that will be required to obtain a facility for which an air quality operating permit pursuant to section 502 of the Federal Clean Air Act, 42 USC 7401, et seq., as amended, and which does not otherwise hold an air quality permit issued by the department has been issued by the department and remains in effect.~~

(2) Fees Pursuant to this rule, fees shall be assessed under this rule for to the owner or operator of record on the date of billing, for all sources of air contaminants described above in (1) facilities that meet the description in (1) as of January 1 of the calendar year in which fees are billed.

(3) Air quality permit fee schedules will require owners and operators of all sources of air contaminants facilities required to obtain a Montana air quality permit or an air quality operating permit to contribute to those department activities funded by air quality permit fees. The department shall attempt to identify all sources of air contaminants facilities subject to the annual air quality operating fee requirement and shall require payment from the owners or operators of all such sources of air contaminants facilities.

(4) Annually, the department shall provide the owner or operator of each ~~air contaminant source, facility~~ required to pay an air quality operation fee, with written notice of the

amount of the fee and the basis for the fee assessment.

(a) The air quality operation fee is due within 30 days after receipt of the notice, unless the fee assessment is appealed pursuant to ARM 17.8.511. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due within 30 days after receipt of the notice. Any remaining fee, ~~which may be that is~~ due after completion of an appeal, is due ~~immediately upon~~ within 30 days after issuance of the board's decision or ~~upon completion of~~ within 30 days after issuance of the final decision in any judicial review of the board's decision.

(b) If an owner or operator assessed an air quality operation fee fails to pay the required fee (or any required portion of an appealed fee) within ~~60~~ 30 days after the ~~billing~~ due date, the department may impose a late payment charge of 10% of the fee (or of any required portion of an appealed fee), plus interest on the fee (or on any required portion of an appealed fee) computed at the interest rate established under 75-2-220(5)(a)(i), MCA.

(5) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of \$400, plus ~~\$17.89~~ 20.61 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

(6) ~~A separate air quality operation fee, as set forth in (5) above, is assessed for each source of air contaminants under (1), except that~~ The owner or operator of a source of air contaminants facility may not be required to pay more than one administrative fee if the facility is subject to more than one Montana air quality permit issued by the department.

(7) and (8) remain the same.

(9) ~~Each source of air contaminants~~ The owner or operator of each facility subject to (1) ~~above~~ shall submit to the department, on the date specified by the department, all information necessary to complete an inventory of estimated actual emissions for the preceding calendar year. The department shall notify the ~~source owner or operator of the facility~~ of the date by which the information must be submitted. The information submittal date may not be earlier than February 15.

AUTH: 75-2-111, 75-2-220, MCA

IMP: 75-2-211, 75-2-220, MCA

17.8.511 AIR QUALITY PERMIT APPLICATION/OPERATION FEE ASSESSMENT APPEAL PROCEDURES (1) The department's fee assessment may be appealed by the owner or operator of ~~a source of air contaminants~~ the facility to the board of environmental review within 20 days of:

(a) receipt of the fee assessment notice ~~described in ARM 17.8.505(2) (Air Quality Operation Fees)~~; or

(b) issuance of a determination of incompleteness of a permit application based on the lack of the proper permit

application fee pursuant to ~~ARM 17.8.504(2) (Air Quality Permit Application Fees)~~ or ~~ARM 17.8.514(3) (Air Quality Open Burning Fees)~~.

AUTH: 75-2-111, MCA

IMP: 75-2-211, MCA

17.8.514 AIR QUALITY OPEN BURNING FEES (1) Concurrently with the submittal of an air quality major open burning permit application, as required in ~~ARM Title 17, chapter 8, subchapter 6 (Open Burning)~~, ~~17.8.610 (Major Open Burning Source Restrictions)~~, the applicant shall submit an air quality major open burning permit application fee.

(2) Air quality major open burning fees are separate and distinct from any air quality operation fee required to be submitted to the department pursuant to ARM 17.8.505 or Montana air quality permit application fee required to be submitted to the department pursuant to ARM 17.8.504 ~~by a source of air contaminants~~.

(3) An air quality major open burning permit application is incomplete until the proper air quality major open burning fee is paid to the department. If the department determines that the ~~air quality major open burning~~ fee submitted with the ~~major open burning permit~~ application is insufficient, it shall notify the applicant in writing of the appropriate fee which must be paid before the major open burning permit application can be processed. If the fee assessment is appealed to the board pursuant to ARM 17.8.511, and if the fee deficiency is not corrected by the applicant, the major open burning permit application is incomplete until issuance of the board's decision or ~~when the~~ until any judicial review of the board's decision has been completed, whichever is later. Upon final disposition of ~~the an~~ appeal, any portion of the fee ~~which may be~~ due to either the department or the applicant as a result of the decision is ~~immediately due and payable within 30 days after issuance of the board's decision or within 30 days after issuance of the final decision in any judicial review of the board's decision~~.

(4) The air quality major open burning ~~air quality~~ permit application fee shall be based on the actual, or estimated actual, amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality major open burning permit ~~for major open burning sources, as required under ARM 17.8.610 (Major Open Burning Source Restrictions)~~.

(a) The air quality major open burning permit application fee ~~shall be~~ is the greater of the following, as adjusted by any amount determined pursuant to (4)(b), ~~below~~:

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous
appropriate calendar year,
multiplied by ~~\$13.32~~ 16.60; plus
tons of oxides of nitrogen emitted in the previous

appropriate calendar year,
multiplied by ~~\$3.33~~ 4.15; plus
tons of volatile organic compounds emitted in the
previous appropriate calendar year,
multiplied by ~~\$3.33~~ 4.15; or

(ii) a minimum fee of \$250.

(b) The department may reduce or eliminate, as appropriate, the air quality major open burning permit application fees to be collected from an applicant in recognition of the non-monetary contributions made by the applicant to the smoke management program. The department may recognize only those non-monetary contributions made by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, ~~as~~ required under ARM 17.8.610. To be accepted for the purpose of reducing an applicant's fees for the subsequent calendar year, a written claim for non-monetary contributions to the smoke management program must be filed with the department no later than 60 days after the close of the calendar year during which the non-monetary contributions were made by the applicant. ~~The A~~ A claim ~~shall~~ must describe in detail both the nature of the non-monetary contributions and the dollar value of ~~such~~ the contributions. ~~The non~~ Non-monetary contributions may consist of, but are not limited to, staff time and the use of equipment, supplies or space. The department ~~may~~ shall review ~~the any~~ written claims ~~that are~~ submitted, and may adjust the dollar value of the non-monetary contributions ~~based~~ upon a finding that the value assigned to the contributions is not reasonable, the non-monetary contributions that were made were not reasonably related to the smoke management program, or both. In no case ~~shall a source~~ may an applicant be reimbursed for non-monetary contributions in excess of ~~their~~ the applicant's assessed open burning permit fee.

AUTH: 75-2-111, MCA

IMP: 75-2-211, 75-2-220, MCA

17.8.515 AIR QUALITY OPEN BURNING FEES FOR CONDITIONAL, EMERGENCY, CHRISTMAS TREE WASTE, AND COMMERCIAL FILM PRODUCTION AND FIREFIGHTER TRAINING OPEN BURNING PERMITS (1) Concurrent with ~~the~~ submittal of an air quality open burning permit application, as required in ARM Title 17, ~~chapter 8, subchapter 6 (Open Burning),~~ 17.8.611 ~~(Emergency Open Burning Permits),~~ 17.8.612 ~~(Conditional Air Quality Open Burning Permits),~~ 17.8.613 ~~(Christmas Tree Waste Open Burning Permits),~~ and 17.8.614 ~~(Commercial Film Production Open Burning Permits),~~ or 17.8.615, the applicant shall submit an air quality open burning fee.

(2) Air quality open burning fees are separate and distinct from any other air quality fee required to be submitted to the department pursuant to this subchapter. ~~However, nothing in these rules may be deemed to allow the department to collect more than one fee simultaneously.~~

(3) An air quality open burning permit application is incomplete until the proper air quality open burning fee is paid to the department, except as provided in (4)(c). If the department determines that the ~~air quality open burning~~ fee submitted with the ~~open burning permit~~ application is insufficient, it shall notify the applicant in writing of the appropriate fee which must be paid before the open burning permit application can be processed. If the fee assessment is appealed to the board pursuant to ARM 17.8.511, and if the fee deficiency is not corrected by the applicant, the permit application is incomplete until issuance of the board's decision or until any judicial review of the board's decision has been completed, whichever is later. Upon final disposition of ~~the an~~ appeal, any portion of the fee ~~which may be~~ due to either the department or the applicant as a result of the decision is ~~immediately due and payable within 30 days after issuance of the board's decision or within 30 days after issuance of the final decision in any judicial review of the board's decision.~~

(4) The air quality open burning ~~air quality~~ permit application fees ~~shall be~~ are:

~~(a)~~ (b) \$100 for a wood and wood byproduct trade waste open burning permit under ARM 17.8.612;

~~(b)~~ (c) ~~No fee is required~~ \$100 for an untreated wood-waste open burning permit at a licensed landfill site under ARM 17.8.612. The required fee for this activity is included in the solid waste management system licensing fee, submitted pursuant to ARM Title 17, chapter 50, subchapter 4. Therefore, the applicant is not required to submit a fee with the untreated wood-waste open burning permit application;

~~(c)~~ (a) \$100 for an emergency open burning permit under ARM 17.8.611. A fee for an emergency open burning permit application need not be submitted with the initial oral request to the department, but must be submitted with the subsequent written application required under ARM 17.8.611. Submittal of the fee is a condition of any authorization given by the department under ARM 17.8.611, and the failure to submit the fee is considered a violation of such authorization and may be subject to enforcement action;

(d) \$100 for a Christmas tree waste open burning permit under ARM 17.8.613; ~~and~~

(e) \$100 for a commercial film production open burning permit under ARM 17.8.614; and

(f) \$25 for a firefighter training open burning permit under ARM 17.8.615. As a condition of a firefighter training open burning permit, the department may require submission of an annual fee to maintain the permit.

AUTH: 75-2-111, 75-2-211, 75-2-220, MCA

IMP: 75-2-211, 75-2-220, MCA

17.8.501, 17.8.504, 17.8.505, 17.8.511

REASON: Pursuant to 75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality

operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted. The amount of money the Department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous fiscal year. The emission component of the operation fee is also revised to account for changes in the total amount of pollutants emitted in the state in the previous calendar year. This rulemaking would set the air quality operation fees to be billed in calendar year 2003. Air quality fees billed in 2003 will be based on emissions from calendar year 2002 and will fund the Department's activities in fiscal year 2004.

The legislative appropriation for fiscal year 2003 was \$2,430,557. The amount of the carryover from fiscal year 2002 was \$231,742. The total amount of pollutants reported for last year's fees was 112,416 tons, and the per-ton component of the air quality operation fee was \$17.89.

The appropriation for fiscal year 2004 is \$2,665,948, an increase of \$235,391 from last fiscal year. The projected carryover from fiscal year 2003 is \$227,946. The total amount of pollutants reported for 2003 fees is 103,917 tons. Based upon the appropriation, the carryover, the projected permit application fees, and the emission inventory, to cover the Department's costs of developing and administering the air quality permitting program, it is necessary for the Board to increase the per ton charge to \$20.61. Therefore, the Board is proposing to amend ARM 17.8.505(5) by replacing the per-ton charge of \$17.89 with \$20.61.

In 2002, the total amount of fees assessed was \$2,205,926. The amount of fees that would be assessed to meet this fiscal year's appropriation would be \$2,342,002, for an increase of \$136,076. In 2003, fees would be assessed for 501 facilities.

The Board is proposing to change the term "source(s) of air contaminants" to "facility(ies)" throughout ARM Title 17, chapter 8, subchapter 5, to be consistent with the new subchapter 7 air quality permit rules. The definition of "facility" would be added to ARM 17.8.501 and the definition of "source(s) of air contaminants" would be deleted.

The term "owner or operator" would be added to several subsections to clarify that the owner or operator of a facility, rather than the facility itself, pays the fees.

The Board is proposing to add language to several subsections relating to applications and fees that would clarify the distinction between a Montana air quality permit (formerly a preconstruction permit), and an air quality operating permit. Section 75-2-220(1), MCA, requires the applicant to submit a fee concurrent with the submittal of a permit application, and the Board is proposing that language be added to clarify the provisions of the rule that implement this statutory requirement.

The Board is proposing several additional miscellaneous amendments to ARM 17.8.505. ARM 17.8.505(2) would be amended to clarify that fees are assessed to the current holder of the permit. ARM 17.8.505(4)(a) would be amended to allow 30 days for submission of any remaining fee due after completion of a fee appeal, rather than requiring immediate payment as under the current rule. This amendment is necessary to allow adequate time for submission of the payment. ARM 17.8.505(4)(b) would be amended to allow the Department to impose a late payment charge and interest if the owner or operator fails to pay the operation fee within 30 days after the due date, rather than within 60 days after the billing date, as under the current rule. The due date is 60 days after the billing date; however, billing dates may vary, and the due date is printed on the invoices, making it easier to determine when 30 days have passed since the due date.

Other proposed amendments to the air quality fee rules would make minor clerical changes that would have no substantive effect and would make the rules easier to read.

17.8.514, 17.8.515

REASON: The Board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2004. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the Department develops a budget reflecting the cost the Department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2002, the major open burners reported 6129.1 tons of emissions, compared to 7691.4 tons for calendar year 2001, or a decrease of 1562.3 tons.

The budget for operating the program for 12 major open burners in fiscal year 2004 is \$47,737.00, compared to a budget of \$44,723.00 for fiscal year 2003. The \$3,014.00 budget increase is due to expected increases of \$1,709.00 for personnel services, \$975.00 for balloon runs, \$15.00 for miscellaneous expenses, and \$393.00 for indirect costs. Travel expenses are expected to decrease by \$78.00. Due to the decrease in the emission inventory and the expected increase in expenses for the program, it is necessary to increase the per ton charge. The Board is proposing to increase the permit fees from \$13.32 per

ton of particulate, \$3.33 per ton of oxides of nitrogen, and \$3.33 per ton of volatile organic compounds emitted to \$16.60, \$4.15, and \$4.15, respectively.

The \$3,014.00 budget increase for this fiscal year would result in a total cumulative increase in fees of the same amount. This amount would be paid by the 12 major open burners.

The Board is proposing to delete language in ARM 17.8.515(2) relating to the Department's ability to collect more than one fee simultaneously. Similar language was deleted from ARM 17.8.504(3) and 17.8.505(7) in 1999, and this proposed amendment would conform the air quality open burning fee rules to the air quality fee rules, in this respect.

In accordance with 75-2-220(1), MCA, requiring submission of a fee with all permit applications required under the Clean Air Act of Montana, the Board is proposing a new ARM 17.8.515(4)(f) to require a \$25 application fee for a firefighter training open burning permit.

The Board is proposing to add language to ARM 17.8.515(4)(c) to clarify that, although a fee of \$100 is required for an untreated wood-waste open burning permit at a licensed landfill site, this fee is included in the solid waste management system licensing fee and the applicant is not required to submit an additional fee with the open burning permit application.

The Board is proposing to amend ARM 17.8.514(3) and 17.8.515(3) to make the same change proposed to ARM 17.8.505(4)(a) allowing 30 days for payment of any fee due after final disposition of a fee appeal.

Other proposed amendments to the open burning fee rules would make minor clerical changes that would have no substantive effect and would make the rules easier to read.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@state.mt.us, no later than 5:00 p.m., August 6, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major

facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@state.mt.us, or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

David Rusoff
DAVID RUSOFF
Rule Reviewer

BY: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State June 16, 2003.